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ATTORNEYS AT LAW

GLENN A. GARBER  
(ADMITTED IN NY & NJ)

EX-PARTE APPLICATION

May 20, 2020

Honorable Paul A. Englemayer  
U.S. District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

Re: *United States v. Kelvin Martinez*,  
Dkt No.: 13 Cr. 699 (PAE)

Dear Judge Englemayer:

I write in response to the Court's May 20, 2020 order (DE 90) in the above referenced matter, and to request an assignment under the Criminal Justice Act (CJA). In the order the Court asks trial counsel, the undersigned, to supplement Martinez's *pro se* application for compassionate release with a memorandum of law.

As the Court may recall, I was retained to represent Mr. Martinez for trial and appeal. After the denial of the appeal, Mr. Martinez claimed that I provided ineffective assistance of counsel pursuant to a motion under 28 U.S.C. § 2255, which was denied (DE 88).

I have tried to reach out to Mr. Martinez's family but the contact information I have is no longer working. We also requested of the prison that Mr. Martinez call me and are awaiting a response. Mr. Martinez does not have me on his list for BOP corrlinks email.

Based on communications with Mr. Martinez and his family around the time of the 2255 motion, that he is incarcerated and has been so for many years, and due to the fact that the instant compassionate release motion is made *pro se*, it is my belief (pending communication with him or his family) that he is indigent and cannot afford to pay for counsel. It is also my understanding that despite the claim of ineffective assistance of counsel, Mr. Martinez would still want me to assist him with the instant motion, and I am certainly agreeable to resuming my representation.

I am a member of the CJA panel in this Court. It is therefore requested that the Court assign me as counsel under the CJA to assist Mr. Martinez with his compassionate release motion. If I learn that he is not indigent, I will promptly notify the Court.

I also advise the Court that it is my intention to file a memorandum of law by May 26, 2020 as instructed; but that I may need to seek a short extension if I cannot communicate with Mr. Martinez before then.

Thank you for your consideration.

**GLENN A. GARBER, P.C.**

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Respectfully,

/s/ Glenn A. Garber

Glenn A. Garber

cc: Kelvin Martinez (by regular mail)

**GRANTED.** The Court reappoints Mr. Garber, *nunc pro tunc*, as of May 20, 2020.  
The Clerk of Court is requested to terminate the motion at Dkt. No. 108.

8/13/2020

SO ORDERED.



PAUL A. ENGELMAYER  
United States District Judge